

WAC 208-680A-040 Definitions
WAC 208-680E-025 Quarterly Reports
WAC 208-680F-020 Errors and Omissions Policy – Securities Alternative
Supplement to CR-102
Purpose, Anticipated Effects, and Reasons Supporting

The Legislature intended that RCW 18.44 be interpreted and administered to protect escrow agent clients. “When read in its entirety, the Act reflects a legislative intent to protect clients of escrow agents.” *Estate of Jordan v. Hartford Accident & Indem. Co.*, 120 Wn.2d 490, 497 (1993). To that end, under RCW 18.44.410 the Director “has the power and broad administrative discretion to administer and interpret this chapter to facilitate the delivery of services to citizens of this state by escrow agents.” The Director believes adoption of these rules is consistent with that intent and within the power and discretion granted to her.

WAC 208-680E-025 -- Quarterly Reports

This new rule would mandate that Escrow Agents prepare and file quarterly reports. The reports would be due within 30 days following the end of each fiscal quarter. Failure to comply would be grounds for taking action to deny, suspend, decline to renew, or revoke an Escrow Agent’s license.

- Quarterly reports will allow DFI to monitor Escrow Agents more effectively and efficiently.
- Under RCW 18.44.121, the Director is required to efficiently administer the statute such that the fees collected from licensees pay for the costs of administration. There are approximately 200 escrow agents, most of which are small businesses. Mandatory reports, while not a substitute for onsite inspections, will allow the director to better monitor the industry at a minor cost to the industry and DFI.
- Many Escrow Agents have been voluntarily submitting quarterly reports for several years. The old reports are cumbersome to complete and review and they require a great deal of supporting documentation. This rule would make reporting mandatory, but the new required report will be simple and much easier to complete.
- A draft copy of the new report form was shared with the attendees of the February 10, 2004, and April 6, 2004, Escrow Commission meetings, who commented that it appeared to be a much easier form to complete. Several agents have commented on the draft form. Those comments have been considered and incorporated as appropriate in the new form.
- The new report includes sections concerning trust account administration and reconciliation, operations (including changes in financial condition, legal proceedings, changes in ownership, locations of offices and records, and insurance coverage), and certain results of operations. In response to privacy concerns, the response to certain questions is optional.

- The new report does not require escrow agents to keep any records beyond those already required by statute and existing regulations.
- The new form has been implemented on a voluntary basis for the quarter-ended March 31, 2004. Several escrow agents have commented to the Division that the revised form is much easier to use.

WAC 208-680F-020 Errors and Omissions Policy – Securities Alternative.
WAC 208-680A-040 Definitions.

The proposed amendments to these sections would clarify the types of securities that may be used in lieu of the errors and omission (“E&O”) policy required by RCW 18.44.201. Under that section, an Escrow Agent must maintain a \$50,000 E&O policy or deposit \$50,000 in cash or securities in an approved depository. The current definition of “securities” in WAC 208-680A-040 allows “any stock, treasury bill, bond, debenture or collateral trust certificate tendered in lieu of an errors or omissions policy.” In addition to being overly broad, neither this definition nor WAC 460-680F-020 explicitly prohibits depositing securities issued by affiliates of the escrow agent.

The current rules virtually allow any security, regardless of quality, volatility, or liquidity, to be substituted for an E&O policy. This compromises the protection of escrow agent clients. Under the proposal, the definition of “securities” in WAC 208-680A-040 would be stricken and WAC 208-680F-020 would be amended to require that any securities deposited in lieu of an E&O policy meet the definition of “investment securities” under WAC 208-512. Those regulations, which pertain to the type of securities in which banks and trust companies may invest, define “investment securities” to generally include certain government obligations and certain investment grade corporate securities. By similarly limiting the securities that may be used by an escrow agent to satisfy RCW 18.44.201 to such high-quality obligations, escrow agent clients will be better protected.

To the Division’s knowledge, only one currently licensed Escrow Agent relies on WAC 208-680F-020. That agent, which maintains a \$50,000 cash deposit in an approved depository, would not be impacted by the proposed changes to the rule.